



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2021-0616]

RIN 1625-AA87

### Security Zone; Corpus Christi Ship Channel, Corpus Christi, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

---

**SUMMARY:** The Coast Guard is establishing three 500-yard radius temporary security zones around Motor Vessel (M/V) ARC ENDURANCE, M/V LIBERTY PEACE, and M/V OCEAN FREEDOM. These zones are needed to protect the vessels, which will be carrying military cargo onboard, while they are transiting the Corpus Christi Ship Channel in Corpus Christi, TX. Entry of vessels or persons into the zones are prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through August 20, 2021. For the purposes of enforcement, actual notice will be used from August 2, 2021 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2021-0616 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi

Waterways Management Division, U.S. Coast Guard; telephone 361-939-5130, e-mail

Anthony.M.Garofalo@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Corpus Christi
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish these security zones by August 2, 2021 to ensure security of these vessels and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to provide for the security of these vessels.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Corpus Christi (COTP) has

determined that potential hazards associated with the transit of the M/V ARC ENDURANCE, M/V LIBERTY PEACE, and M/V OCEAN FREEDOM when loaded with military cargo will be a security concern within a 500-yard radius of the vessels. This rule is needed to protect the vessels while they are transiting within Corpus Christi, TX, from August 2, 2021 through August 20, 2021.

#### **IV. Discussion of the Rule**

The Coast Guard is establishing three 500-yard radius temporary security zones around M/V ARC ENDURANCE, M/V LIBERTY PEACE, and M/V OCEAN FREEDOM. The zones for the vessels will be enforced from the time the first vessel arrives on August 2, 2021, until the last vessel arrives Corpus Christi Ship Channel on August 14, 2021. The duration of the zones is intended to protect the vessels and military cargo on board while the vessels are in transit. No vessel or person will be permitted to enter the security zones without obtaining permission from the COTP or a designated representative.

Entry into these security zones are prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi. Persons or vessels desiring to enter or pass through these zones must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 361-939-0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for these security zones.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, duration, and location of the security zones. This rule will impact a small designated area of the Corpus Christi Ship Channel during the vessels’ transits while loaded with cargo over a nineteen-day period. Moreover, the Coast Guard will issue BNMs via VHF-FM marine channel 16 about the zones as appropriate and the rule allows vessels to seek permission to enter the zones.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary security zones may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves security zones lasting for the duration of time that the M/V ARC ENDURANCE, M/V LIBERTY PEACE, and M/V OCEAN FREEDOM are within the Corpus Christi Ship Channel. It will prohibit entry within a 500 yard radius of the M/V ARC ENDURANCE, M/V LIBERTY PEACE, and M/V OCEAN FREEDOM while the vessels are transiting within the Corpus Christi Ship Channel. It is categorically excluded from further review under paragraph L60 in Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.2. Add § 165.T08-0616 to read as follows:

#### **§165.T08-0616 Security Zone; Corpus Christi Ship Channel. Corpus Christi, TX.**

(a) *Location.* The following areas are a security zone: all navigable waters encompassing a 500-yard radius around Motor Vessel (M/V) ARC ENDURANCE, M/V LIBERTY PEACE, and M/V OCEAN FREEDOM while the vessels are in the Corpus Christi Ship Channel.

(b) *Effective period.* This section is from August 2, 2021 through August 20, 2021.

(c) *Regulations.* (1) The general regulations in § 165.33 of this part apply. Entry into the zones is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. A designated representative is a

commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi.

(2) Persons or vessels desiring to enter or pass through the zones must request permission from the COTP Sector Corpus Christi on VHF-FM channel 16 or by telephone at 361-939-0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for these security zones.

Dated: July 31, 2021

H. C. Govertsen

Captain, U.S. Coast Guard,

Captain of the Port Corpus Christi.

[FR Doc. 2021-16738 Filed: 8/6/2021 8:45 am; Publication Date: 8/9/2021]